

REMARKS

The Office Action and the cited and applied reference have been carefully reviewed. No claim is allowed. Claims 9 and 13-17 presently appear in this application and define patentable subject matter warranting their allowance. Reconsideration and allowance are hereby respectfully solicited.

Claim 9 has been objected to because of informalities. The examiner states that claim 9 depends on a subsequent claim 13.

With due respect to the examiner, there is nothing improper about claim 9 being amended to be dependent from a claim 13 that was subsequently added. Claim 9 is now amended to clarify that it is "the protein, variant or fragment of claim 13" for which the antigen-binding portion of an antibody is intended to be specific.

Claims 13, 14, and 9 have been rejected under 35 U.S.C. §102(b) as being anticipated by Semenza, WO 96/39426. The examiner states that Semenza discloses a purified hypoxia-inducible factor 1 protein which is expressed in a hypoxia-induced condition in cells. It is the examiner's position that, since claims 13 and 14 contain an embodiment drawn to a polypeptide comprising a fragment of a protein of SEQ ID NO:4 or a fragment of protein encoded by SEQ ID NO:3, wherein the

term "fragment" would arguably be a single amino acid residue, the functional protein disclosed by Semenza would comprise such a fragment.

This rejection is obviated by the amendment to claim 13 to recite that, in the fragment embodiment, the isolated polypeptide consists of, not comprises, the fragment of (a) or (b) which retains the biological activity thereof.

Accordingly, Semenza would not comprise such a fragment and therefore cannot anticipate the presently claimed invention.

Reconsideration and withdrawal of the rejection are therefore respectfully requested.

In view of the above, the present claims define patentable subject matter warranting their allowance.

Favorable consideration and early allowance are earnestly urged.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By 

Allen C. Yun
Registration No. 37,971

ACY:pp
Telephone No.: (202) 628-5197
Facsimile No.: (202) 737-3528
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